

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of DSCI Corporation)	
For Declaratory Orders to Ensure)	Docket No. 05-28
Verizon Massachusetts' Compliance)	
With Resale Obligations with Respect)	
To Customer Specific Pricing Contracts)	

REPLY BRIEF OF VERIZON MASSACHUSETTS

I. INTRODUCTION

Verizon Massachusetts ("Verizon MA") submits this Reply to the Initial Brief of DSCI filed in this case on August 9, 2005.

II. VERIZON MA HAS DEMONSTRATED THAT ITS PROPOSED RESTRICTION ON THE RESALE OF THE COMA CSP IS REASONABLE AND NON-DISCRIMINATORY.

In its Initial Brief, DSCI notes that Verizon MA has sought to limit the resale of the COMA CSP to the "customer classes enumerated in the agreement between Verizon and the Commonwealth (*i.e.*, state and local agencies and a limited set of non-agency 'eligible entities'))" and argues that Verizon MA "has not met its burden" under the applicable resale regulations of "showing that this customer class limitation on DSCI's resale of the COMA Contract is reasonable and nondiscriminatory." DSCI Initial Brief at 6-7. The evidence in the record of this proceeding, however, shows that Verizon MA has met its burden.

As Verizon MA discussed in its Initial Brief, the evidence in the record clearly establishes that the Commonwealth is a "unique customer" and that the legal framework under which contracts between Verizon MA and the Commonwealth are created (*i.e.*, that they are subject to extensive state-mandated competitive bidding requirements and

significant non-negotiable terms), justifies the narrowly-tailored limitations Verizon MA seeks to impose on the resale of the COMA and Customer 38 CSPs. Verizon Initial Brief at 8-14.¹ Moreover, Verizon MA has shown that its proposed limitation is reasonable and non-discriminatory. *Id.* at 13-14. Indeed, according to DSCI, the only effect of Verizon MA's proposed limitation on DSCI would be to "limit DSCI's ability to resell the COMA Contract only to a portion of DSCI's customer base representing agency customers," DSCI Initial Brief at 7, although Verizon MA's proposal would also allow DSCI to sell to "eligible entities" designated by the Commonwealth.² Such a limitation cannot be construed as unreasonable or discriminatory where, as in this case, Verizon MA would make exactly the same COMA CSP terms and conditions as apply to Verizon MA itself available to DSCI, including the same customer class restrictions imposed on Verizon MA as part of that contract. *See* Verizon MA's Initial Brief at 9, 14. In short, Verizon MA's proposed limitation is narrowly-tailored to address the unique features of contracts with the Commonwealth identified by Verizon MA in this proceeding, and is reasonable

¹ DSCI also argues that "Verizon has admitted it has no cost basis for limiting resale of COMA." DSCI Initial Brief at 7 (citing RR-DTE-VZ-2; Tr: 07/26/05 at 75-77). This statement overstates the representations Verizon MA has made on this point in the record of this proceeding. In fact, Verizon MA has done nothing more than indicate that cost was not the basis for its proposed limitation on the resale of the COMA CSP. In any case, neither the 1996 Act nor the applicable FCC rules require that "cost" be the basis for such class restrictions, but merely that those restrictions be "reasonable and nondiscriminatory." *See* 47 C.F.R. § 51.613(b). As discussed above and in its Initial Brief (at 8-14), Verizon MA has met its burden of establishing that its proposed restriction on the resale of the COMA CSP is reasonable and nondiscriminatory.

² Indeed, while DSCI alleges that Verizon MA's conduct in this case has prevented DSCI from reselling the COMA CSP to any of its potential customers, this allegation is plainly false. DSCI and Verizon MA entered into a resale agreement entitling DSCI to resell the COMA CSP to the Commonwealth and eligible entities on January 5, 2005. *See* Verizon MA's Initial Brief at 5; Exh. VZ-2 at 5. Verizon MA has also agreed that DSCI could resell the Customer 38 CSP to the Commonwealth and eligible entities and forwarded to DSCI for its execution a proposed resale agreement that was substantially the same as the one DSCI had already signed allowing resale of the COMA CSP. As DSCI testified, it has a number of customers that would qualify as eligible entities. Tr: 07/26/05 at 28-29. Verizon MA's Initial Brief at 5; Tr: 07/26/05 at 40. DSCI acknowledged at the hearing in this case that Verizon MA has made it clear that DSCI could resell the COMA and Customer 38 CSPs to its customers who are eligible entities. Tr: 07/26/05 at 41. To the extent DSCI has elected not to compete for those customers, that decision is not attributable to any conduct of Verizon MA. Moreover, there are many other CSPs in Massachusetts that DSCI could choose to resell to its customers. Tr: 07/26/05 at 35.

and nondiscriminatory. Therefore, Verizon MA has plainly met its burden under 47 CFR § 51.613(b).

III. THE DEPARTMENT SHOULD REJECT DSCI'S REQUEST FOR AN ORDER COMPELLING VERIZON MA TO ANSWER WHAT DSCI CONTENDS ARE REMAINING QUESTIONS REGARDING THE COMA CSP.

In its brief, DSCI argues that “[t]he Department should order Verizon to respond” to DSCI’s request for a legal opinion on how Verizon MA would “interpret” contract language in the COMA CSP that provides that the Commonwealth can terminate that agreement without incurring a penalty and whether that provision would apply to DSCI. DSCI Initial Brief at 12-14. Specifically, DSCI cites paragraph 4 of the Commonwealth’s Standard Terms and Conditions, which provides that the Commonwealth “may terminate a contract without cause and without penalty,” and inquired whether Verizon MA: (1) interprets this language to mean what it says, and (2) whether DSCI would have the same termination rights as the Commonwealth if it signed an agreement to resell the COMA CSP. DSCI Initial Brief at 13; Exh. VZ-3. DSCI now claims that it cannot enter into a resale agreement without knowing the scope of its potential liability and argues that the Department should direct Verizon MA to respond to these questions. DSCI Initial Brief at 13. The Department should reject DSCI’s request.

First, Verizon MA’s responded to DSCI by stating that the “referenced contract language and documentation speak for themselves, and the legal interpretation of the contract is a matter best undertaken” between DSCI and its counsel. Exh. VZ-4. The suggestion that Verizon MA’s response was not reasonable is completely unfounded.

The contract language quoted by DSCI that allows the Commonwealth to terminate a contract without cause and without penalty is clear and unambiguous.

Indeed, this language is among those terms and conditions of the Commonwealth CSPs that make the Commonwealth contracts unique because they are mandated by law and non-negotiable. *See* Verizon Initial Brief at 12 n.9. Verizon MA has specifically advised DSCI that it would agree to allow DSCI to resell the COMA CSP in accordance with applicable law and subject only to the limitation that that CSP be resold in accordance with its terms only to government agencies and **other** “eligible entities.” *See* Exh. VZ-4. Thus, it is unclear why any question remains in DSCI’s mind as to whether DSCI, like the Commonwealth, would be able to terminate any resale agreement it enters with Verizon MA to resell the COMA CSP without cause and without penalty. It clearly could. Moreover, this unique feature of the COMA CSP is among those that support the reasonableness of Verizon MA’s proposed limitations on the resale of that agreement. *See* Exh. VZ-1 at 7 (Verizon witness, Ms. Jussaume, notes that “the rates for many of the services provided under the Customer 38 and COMA CSPs (ITT09 and ITT18) are the lowest offered to any commercial customer in the state given its terms and conditions (*i.e.*, the absence of any termination liability)).”

Finally, as DSCI’s witness admitted, a number of the questions raised by DSCI in connection with its various resale requests sought legal interpretations from Verizon MA regarding CSP language. Tr: 11/26/05 at 26. While Verizon MA has agreed to provide DSCI with CSP terms and conditions of resale within reasonable time frames, there should be no expectation by DSCI, and indeed there is no legal or regulatory requirement, that Verizon MA affirmatively provide DSCI with its legal position on the meaning and effect of every provision of a CSP prior to DSCI entering into an agreement to resell that CSP. Just as CLECs are required to do when they elect to adopt an interconnection

agreement under the 1996 Act, when they seek to resell a CSP, they must review the terms and conditions of that agreement and determine whether that agreement will meet their business needs. Moreover, the imposition of a requirement that all legal issues potentially subject to dispute be addressed at the time of the initial resale request, would introduce needless delay into the process of addressing CLEC CSP resale requests, as the parties could potentially engage in extensive discussions regarding the meaning of particular provisions, which may never become the subject of a dispute. While Verizon MA has, and will likely continue to respond to CLECs' reasonable requests for clarification where contract terms are ambiguous, or the meaning of provisions is not determinable from the contract itself (which should be a rare occurrence), CLECs should in the first instance seek their own legal counsel on the meaning and effect of identified CSP language. The extent to which Verizon MA engages in such upfront legal interpretations should remain within Verizon MA's discretion, and the Department should deny DSCI's request for an order requiring Verizon MA to answer its remaining legal questions regarding the Customer 38 CSP.³

IV. CONCLUSION

WHEREFORE, for all of the forgoing reasons, and those set forth in Verizon MA's Initial Brief, the Department should: (1) deny DSCI the relief it seeks in its Complaint and (2) find that the reasonable restrictions on the COMA and Customer 38 CSPs proposed by Verizon MA are reasonable, non-discriminatory, and in accordance with the resale provisions of the 1996 Act.

³ In any case, in light of Verizon MA's statements addressing those questions herein, DSCI's request is moot.

VERIZON NEW ENGLAND INC., D/B/A
VERIZON MASSACHUSETTS,

By its attorneys,

A handwritten signature in cursive script, reading "Keefe B. Clemons", written over a horizontal line.

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